

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 20

February 27, 1997, 4:28 pm
Page S-1721 Temp. Record

BALANCED BUDGET AMENDMENT/Congressional Enforcement Only

SUBJECT: **Balanced Budget Constitutional Amendment . . . S. J. Res. 1. Hatch motion to table the Leahy (for Kennedy) amendment No. 10.**

ACTION: MOTION TO TABLE AGREED TO, 61-39

SYNOPSIS: As reported, S. J. Res. 1, the Balanced Budget Constitutional Amendment: will require a three-fifths majority vote of both Houses of Congress to deficit spend or to increase the public debt limit; will require the President's annual proposed budget submission to be in balance; and will require a majority of the whole number of each House to approve any bill to increase revenue. Congress will be allowed to waive these requirements for any fiscal year in which a declaration of war is in effect. Congress will enforce and implement this amendment by appropriate legislation. The amendment will take effect in fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later. The States will have 7 years to ratify the amendment. For related debate, see 103rd Congress, second session, vote Nos. 47-48, 104th Congress, first session, vote Nos. 62-63 and 65-98, and 104th Congress, second session, vote No. 158.

The Leahy (for Kennedy) amendment would add the following sentence at the end of section 6: "Unless specifically otherwise provided by law, Congress shall have exclusive authority to enforce the provisions of this Article."

Debate was limited by unanimous consent. Following debate, Senator Hatch moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Kennedy amendment is crafted to appear as though it is equivalent to prior efforts to define how this constitutional amendment will be enforced. In reality, though, it would gut the Balanced Budget Amendment by giving Congress, by simple majority votes or even voice votes, the absolute power to say whether it was following the Balanced Budget Amendment. This amendment would put the fox in charge of the hen house.

(See other side)

YEAS (61)			NAYS (39)		NOT VOTING (0)	
Republicans (55 or 100%)	Democrats (6 or 13%)		Republicans (0 or 0%)	Democrats (39 or 87%)	Republicans (0)	Democrats (0)
Abraham	Hutchinson	Bryan	Akaka	Kennedy		
Allard	Hutchison	Graham	Baucus	Kerrey		
Ashcroft	Inhofe	Harkin	Biden	Kerry		
Bennett	Jeffords	Johnson	Bingaman	Kohl		
Bond	Kempthorne	Robb	Boxer	Landrieu		
Brownback	Kyl	Wyden	Breaux	Lautenberg		
Burns	Lott		Bumpers	Leahy		
Campbell	Lugar		Byrd	Levin		
Chafee	Mack		Cleland	Lieberman		
Coats	McCain		Conrad	Mikulski		
Cochran	McConnell		Daschle	Moseley-Braun		
Collins	Murkowski		Dodd	Moynihan		
Coverdell	Nickles		Dorgan	Murray		
Craig	Roberts		Durbin	Reed		
D'Amato	Roth		Feingold	Reid		
DeWine	Santorum		Feinstein	Rockefeller		
Domenici	Sessions		Ford	Sarbanes		
Enzi	Shelby		Glenn	Torricelli		
Faircloth	Smith, Bob		Hollings	Wellstone		
Frist	Smith, Gordon		Inouye			
Gorton	Snowe					
Gramm	Specter					
Grams	Stevens					
Grassley	Thomas					
Gregg	Thompson					
Hagel	Thurmond					
Hatch	Warner					
Helms						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

In previous Congresses amendments have been adopted on how this constitutional amendment would be enforced. For instance, a Nunn amendment was adopted last Congress that provided that absent specific legislation authorizing judicial review, the courts would not have jurisdiction over claims. The Balanced Budget Amendment currently being considered does not contain language on the role of the judiciary, but that fact does not put it in conflict with the earlier amendments that have been adopted. Those amendments, in different forms, basically attempted to make explicit the role that the courts would implicitly have had to play had they not been adopted. Two hundred years of precedent dictate the court's role. In our opinion, those explicit statements were not necessary, so when drafting this amendment we decided to remain silent on the question of enforcement.

The vast body of evidence indicates that the courts will limit themselves to enforcing the Balanced Budget Amendment using the same standards they have used in enforcing Congress' compliance with its other constitutional duties. Those standards require the Federal Courts to insist that Congress's laws stay within the letter of the Constitution, and they also insist that the Federal Courts stay out of any decisions about how Congress will stay within the letter of the Constitution. Well-tested doctrines such as ripeness, standing, justiciability, and political question, the explicit restrictions on Federal courts contained in article III of the Constitution, and section 6 of this proposed amendment itself will effectively prevent Courts from making tax, spending, or other decisions that are within the purview of Congress.

Just as this constitutional amendment will not give the courts the right to intrude in budgetary decisions, it will not give the President new impoundment powers. The Supreme Court has already held that the President's impoundment powers are limited, and, in enacting the Line-Item Veto Act, Congress has established a specific procedure for the President to follow, and has thereby precluded him from exercising the impoundment powers in a different manner. Further, far from creating a new implied enforcement power for the President, this proposed constitutional amendment will give Congress plenary enforcement authority. President Clinton, in his effort to defeat this amendment, has shamelessly demagogued the issue by telling senior citizens that he would have to impound their Social Security checks if the amendment were to pass. We cannot stop him from making such false statements, but Congress clearly would never let him or any other President get away with impounding Social Security funds.

Supporters of the Kennedy amendment have debated it as though it were the Nunn amendment that was before the Senate last Congress. While the amendments have a superficial resemblance, a slight change in the wording of the Kennedy amendment would make its effect radically different. The Kennedy amendment would not merely keep the courts out of tax and spending decisions; it would also prohibit them from striking down laws that were passed in blatant violation of the Constitution. For instance, if Congress raised the debt limit by less than three-fifths majority votes, the Kennedy amendment would not allow the courts to say that it had violated the Constitution. Only Congress could make that judgment (and nothing would require it to even consider whether or not it had violated the Constitution). Simple majority or even voice votes could be held in violation of any of the supermajority vote requirements in this amendment. Taxpayers could even go to jail if they refused to pay taxes that were imposed in clear violation of the Constitution, and no court would be allowed to protect their constitutional rights.

Many Members, and many constitutional experts, have a difference of opinion on how clear the enforcement authority is under this constitutional amendment, but they have little if any disagreement on how the amendment should be enforced. Amendments that have been adopted in previous Congress' were in keeping with how Members believe the Balanced Budget Amendment should be enforced; the Kennedy amendment is not. It would make the requirement to balance the budget unenforceable. We therefore strongly urge our colleagues to support the motion to table.

Those opposing the motion to table contended:

Supporters of the Balanced Budget Amendment apparently believe the old adage, "silence is golden" in reference to judicial power and presidential impoundment power. We think they are making a terrible mistake. Many constitutional experts from across the political spectrum have expressed concern that this language does not contain any explicit limits on either the judiciary or the executive branch. Other experts think such language is unnecessary. Our point is that without explicit language, it is impossible to say how this amendment will be enforced. We have heard our conservative colleagues (all of whom oppose the Kennedy amendment) complain often enough about judges' supposed penchant to read anything into the Constitution that they wish; why then are they so certain that they will defer to Congress on this amendment which explicitly requires a balanced budget? Exactly the same argument applies to presidential impoundment powers. The President is required to defend the Constitution; if Congress, by law, appropriated money in violation of the Constitution he would be put in the position of either obeying the law or the Constitution. Under such a circumstance he would have no choice but to defer to the Constitution and impound funds. Senators do not need to understand the constitutional arguments to understand that constitutional experts are divided on the necessity of the Kennedy amendment. Without the Kennedy amendment we will be putting a great big question mark into the Constitution. Only by adopting this amendment will we be assured that enforcement will be left to Congress. The Senate, by overwhelmingly votes, has adopted similar amendments in the past. We urge it to do so again today.